HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1175 OF 2006.

Sudhakar Sunder Kotian. ..Petitioner.

Versus.

The State of Maharashtra and others...Respondents.

Smt. V. B. Thadani for the Petitioners.

Shri. Ravi Kadam, Advocate General with Smt. V. S. Mhaispurkar, Addtional Government Pleader for the respondents - State.

CORAM: S.B.MHASE, J.
DATE : APRIL 12, 2006.

P.C.

1. Heard Mrs. V. B. Thadani for the petitioner and learned Advocate General Shri. Ravi Kadam for the respondent - State.

2. The Petitioner is FL-II licensee and initially the petitioner was having liquor shop at Ghatkopar which was located within the jurisdiction of Kurla Taluka of Mumbai Suburban District. He decided to close the said shop since the premises in which shop was being run were required to be surrendered to the landlord. Therefore, petitioner decided to shift the said shop to Kandiwali. The said place is located within the jurisdiction of

Borivali Taluka of Mumbai Suburban District. Initially, by an order dated 30th May 2005, the Collector of the Mumbai Suburban District permitted the shifting of the shop of the petitioner and accordingly the petitioner shifted the shop and also paid the shfting charges of Rs.88,000/-. However, that order was cancelled on June 1, 2005 by the Collector, since the Collector had no such powers in view of the promulugation of the amended Rules, namely, Bombay Foreign Liquor (Second Amendment) Rules, 2005 which came into force on April 20, 2005. That order was challenged by the petitioner before the Commissioner, State Excise and the Commissioner remitted the matter to the Collector. That order was challenged before the Minister and the Minister by an order dated December 27, 2005 remitted the matter to the Commissioner, State Excise to reconsider the application of the petitioner for transfer of liqour shop since in view of Sub-rule (4) of Rule-25, as amended, the power was with the Commissioner. That order is challenged by this petition. However, during the pendency of this matter it was orally directed that the Commissioner shall decide the matter. Unfotunately, the Commissioner passed the order dated March 20, 2006 and remitted the matter back to the Collector. When this was brought to the notice of this Court, this Court had taken a note of the fact that even though the Commissioner is having power the Commissioner

has failed to decide the matter and has remitted the application to the Collector who has no power. Under these circumstances, the Commissioner was directed to remain present. Initially, time was taken to file an affidavit. Now, the affidavit has been submitted. It appears that after the Commissioner was required to file an affidavit, he appears to have consulted the learned Advocate General and thereafter has passed another order on 10th April 2006 wherein he has relied upon the proviso to sub-rule (4) of Rule 25 of the above referred to Rules of 2005. No doubt, it appears that the total permissible transfers, in view of the proviso, within the power of the Commissioner was 15% of the total FL-II licences in the District. It has transpired that when amended Rules came into force more than 15% transfers were effected, namely, 71 transfers were effected when the operative licences were 365. Therefore, the Commissioner has found that the application of the petitioner cannot be considered. This court also finds, in view of the aforesaid facts, that the power of the Commissioner under the Rule is exhausted. However, under these circumstances, it is for the State Government to consider whether such transfer is permissible or not, becuase it appears that there is no restriction on the power of State Government to permit such transfer. Learned counsel appearing for the Petitioner states that

accordingly an application will be made before the appropriate authority of the State Government. Learned counsel, however, makes a request that a direction may be issued that, if such an application is made, the Government should dispose of the same within a period of two weeks. Learned Advocate General submits that the appropriate time may be granted for deciding the application. In view of this, the petition is disposed of with the following order.

: O R D E R :

(1) Petitioner is at liberty to make an appropriate application to the State Government for permission to transfer liqour shop from Ghatkopar to Kandivali, in the above referred circumstances.

(2) If such an application is made, Government shall dipose of the same within a period of four weeks from the date of filing of application.

(3) With these directions the petition is disposed of.

(S.B.MHASE, J.)